

Commonwealth of Massachusetts
HAMPDEN SUPERIOR COURT
Case Summary
Civil Docket

06/16/2004
01:01 PM

04 CV 30109-KAN

HDCV2004-00485
Fiore v Hartford Life and Annuity Insurance Company

File Date	05/13/2004	Status	Disposed: transfered to other court (dtrans)
Status Date	06/07/2004	Session	B - Civil B - CtRm 5
Origin	1	Case Type	A99 - Misc contract
Lead Case		Track	F

Service	08/11/2004	Answer	10/10/2004	Rule12/19/20	10/10/2004
Rule 15	10/10/2004	Discovery	03/09/2005	Rule 56	04/08/2005
Final PTC	05/08/2005	Disposition	07/07/2005	Jury Trial	Yes

PARTIES

Plaintiff James W Fiore Active 05/13/2004	Private Counsel 541834 Michael J Coyne Bacon & Wilson PC 33 State Street Springfield, MA 01103 Phone: 413-781-0560 Fax: 413-739-7740 Active 05/13/2004 Notify
Defendant Hartford Life and Annuity Insurance Company Served: 05/14/2004 Served (answr pending) 06/03/2004	Private Counsel 557242 David B Crevier Crevier & Ryan 1500 Main Street -- Suite 2020 Springfield, MA 01115-5532 Phone: 413-787-2400 Fax: 413-781-8235 Active 06/07/2004 Notify

ENTRIES

Date	Paper	Text
05/13/2004	1.0	Complaint & civil action cover sheet filed
05/13/2004		Origin 1, Type A99, Track F.
06/03/2004	2.0	Affidavit of compliance with long-arm statute with proof of service on out of state defendant Hartford Life and Annuity Insurance Company.
06/07/2004	3.0	Notice for Removal to the United States District Court filed by Hartford Life and Annuity Insurance Company
06/07/2004	4.0	Copy of Deft's Petition for Removal to US District Court of Massachusetts.

EVENTS



A TRUE COPY
OF THE DOCKET MINUTES:
IN WITNESS WHEREOF, I hereunto
set my hand, and have caused the seal
of the Superior Court for the County
of Hampden to be affixed on this
16th day of June 2004
Karen Spindler
Deputy Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. 04-485

JAMES W. FIORE,

Plaintiff

v.

THE HARTFORD LIFE AND ANNUITY
INSURANCE COMPANY,

Defendant

AFFIDAVIT OF SERVICE

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JUN - 3 2004

Shirley A. Maggo
CLERK-MAGISTRATE

I, Michael J. Coyne, being duly sworn, depose and state as follows:

1. I am the Attorney of record for the Plaintiff, James W. Fiore, in the above-entitled matter.
2. That on May 14, 2004, I served the Defendant, The Hartford, with the Summons, Complaint, Civil Action Cover Sheet, by mailing copies of same, Certified Mail, Return Receipt Requested, Certificate No. 7160 3901 9841 2205 5715.
3. That the Summons and Complaint were served upon the Defendant on May 18, 2004 as evidenced by the original Return Receipt card which is attached hereto.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 3RD DAY
OF JUNE, 2004

[Signature]
MICHAEL J. COYNE

325693



A true copy.

Attest:

Karen Spindler
Deputy Assistant Clerk

2

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN COUNTY
SUPERIOR COURT

FILED

HAMPDEN, ss.

JUN - 3 2004

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION
NO. 04 485

Marie G. Mazza
CLERK-MAGISTRATE

James W. Fiore, PLAINTIFF(S)

V.

SUMMONS

Hartford Life and Annuity Insurance Company, DEFENDANT(S)

To the above named defendant: Hartford Life and Annuity Insurance Company

You are hereby summoned and required to serve upon Michael J. Coyne

33 State St., Springfield, MA 01103, plaintiff's attorney, whose address is

you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DelVecchio, Esq., at Springfield the 13th day of May in the year of our Lord two thousand four.

Marie G. Mazza
Clerk / Magistrate

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on _____, 2004, I served a copy of the within summons, together with a copy of the original complaint, in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5):

Dated: _____, 2004

N.B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON THE COPY SERVED ON DEFENDANT.

(_____)
(_____, 2004)
(_____)

MCC/FIDRE

SPRINGFIELD MA 01103-2003
33 STATE ST

BACON & WILSON PC



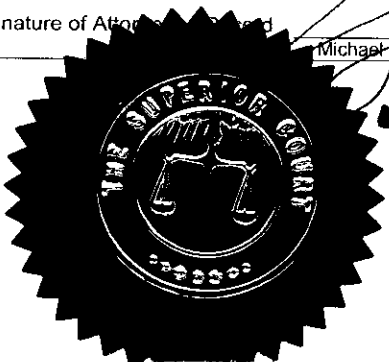
• Print your name, address and ZIP+4 below •

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

Case 3:04-cv-30109-MAP Document 7 Filed 06/17/2004 Page 7 of 11	
CIVIL ACTION COVER SHEET	Trial Court of Massachusetts SUPERIOR COURT DEPARTMENT County: HAMPDEN
Docket Number 04 485	
PLAINTIFF(S) JAMES W. FIORE	DEFENDANT(S) HARTFORD LIFE AND ANNUITY INSURANCE COMPANY
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE MICHAEL J. COYNE, ESQUIRE BACON & WILSON, P.C. 33 State St. Springfield, MA 01103 Ph: 413-781-0560 Fax: 413-739-7740 Board of Bar Overseers number: 541834	ATTORNEY (if known) <div style="text-align: center;">HAMPDEN COUNTY SUPERIOR COURT FILED MAY 13 2004</div>
Origin code and track designation	
Place an x in one box only: <input type="checkbox"/> 1. FO1 Original Complaint <input type="checkbox"/> 2. FO2 Removal to Sup. Ct. c231, s. 104 (Before trial) (F) <input type="checkbox"/> 3. FO3 Retransfer to Sup. Ct. C.231, s. 102C (X) <input type="checkbox"/> 4. FO4 District Ct. Appeal c231, s. 97 & 104 (After Trial) (X) <input type="checkbox"/> 5. FO5 Reactivated after Rescript, Relief from Judgment Order (Mass. R Civ. P. 60) (C) <input type="checkbox"/> 6. E10 Summary Process Appeal (C)	
CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)
TYPE OF ACTION (specify)	TRACK
IS THIS A JURY CASE?	
<u>A 99</u>	<u>Breach of Life Insurance policy</u> (F) () Yes () No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; Indicate single damages only.	
TORT CLAIMS (Attach additional sheets as necessary)	
A. Documented medical expenses to date:	
1. Total hospital expenses.....	\$
2. Total Doctor expenses.....	\$
3. Total chiropractic expenses.....	\$
4. Total physical therapy expenses.....	\$
5. Total other expenses (describe).....	\$
Subtotal \$	
B. Documented lost wages and compensation to date..... \$	
C. Documented property damages to date..... \$	
D. Reasonably anticipated future medical and hospital expenses..... \$	
E. Reasonably anticipated lost wages..... \$	
F. Other documented items of damages (describe)..... \$	
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)	
\$..... TOTAL \$	
CONTRACT CLAIMS (Attach additional sheets as necessary)	
Provide a detailed description of claim(s):	
<u>The defendant has breached the terms of a life insurance policy in the amount of \$50,000.00</u>	
TOTAL \$ <u>50,000.00</u>	
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT	
<u>N/A</u>	
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages of the various methods."	
Signature of Attorney	Date: May 11, 2004
Michael J. Coyne	



A true copy.

Attest:

Karen Spindler
Deputy Assistant Clerk

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

CONTRACT			REAL PROPERTY			MISCELLANEOUS		
A01	Services, labor and materials	(F)	C01	Land Taking (eminent domain)	(F)	E02	Appeal from Administrative Agency G L c 30A	(X)
A02	Goods sold and delivered	(F)	C02	Zoning Appeal, G.L.c.40A	(F)	E03	Action against Commonwealth /Municipality, G L c.258	(A)
A03	Commercial Paper	(F)	C03	Dispute concerning title	(F)	E05	All Arbitration	(X)
A08	Sale or lease of real estate	(F)	C04	Foreclosure of Mortgage	(X)	E07	G.L. c.112,s.12S (Mary Moe)	(X)
A12	Construction Dispute	(A)	C05	Condominium lien &charges	(X)	E08	Appointment of Receiver	(X)
A99	Other (Specify)	(F)	C99	Other (Specify)	(X)	E09	General Contractor bond, G L c149,s.29,29a	(A)
TORT			EQUITABLE REMEDIES			E11	Workers' Compensation	(X)
B03	Motor Vehicle Negligence-	(F)	D01	Specific performance of contract	(A)	E12	G.L.c. 123A,s.12 (SDP Commitment)	(X)
	Personal injury/Property Damage		D02	Reach and Apply	(F)	E14	G.L. c. 123A, s. 9 (SDP Petition)	(X)
B04	Other negligence-	(F)	D06	Contribution or Indemnification	(F)	E15	Abuse Petition, G L c.209A	(X)
	personal injury/property damage		D07	Imposition of Trust	(A)	E16	Auto Surcharge Appeal	(X)
B05	Products Liability	(A)	D08	Minority Stockholder's Suit	(A)	E17	Civil Rights Act,G.L.c.12,s.11H	(A)
B06	Malpractice-Medical	(A)	D10	Accounting	(A)	E18	Foreign Discovery Proceeding	(X)
B07	Malpractice-Other (Specify)	(A)	D12	Dissolution of Partnership	(F)	E19	Sex Offender Registry G.L.c. 178M,s.6	(X)
B08	Wrongful death, G.L.c.229,s.2A	(A)	D13	Declaratory Judgment G.L.c. 231A	(A)	E25	Pleura/ Registry (Asbestos cases)	
B15	Defamation (Libel-Slander)	(A)	D99	Other (Specify)	(F)	E95	Forfeiture G.L.c. 94C,s.47	(F)
B19	Asbestos	(A)				E96	Prisoner Cases	(F)
B20	Personal Injury-Slip & fall	(F)				E97	Prisoner Habeas Corpus	(X)
B21	Environmental	(F)				E99	Other (Specify)	(X)
B22	Employment Discrimination	(F)						
B99	Other (Specify)	(F)						

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
B03	<u>Motor Vehicle Negligence - Personal Injury</u>	(F)	X Yes No

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF: The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, **where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).**

DUTY OF THE DEFENDANT: Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**

CLERK'S OFFICE
SUPERIOR COURT
HARTFORD, CT
2004 MAY 13 P 3:33

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION NO. **04 485**

JAMES W. FIORE,

Plaintiff

v.

HARTFORD LIFE AND ANNUITY
INSURANCE COMPANY,

Defendant

**COMPLAINT AND DEMAND FOR
TRIAL BY JURY**

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAY 13 2004


CLERK-MAGISTRATE

PARTIES

1. The Plaintiff, James W. Fiore, is an individual residing at 24 McIntosh Drive, Wilbraham, Hampden County, Massachusetts.
2. The Defendant, Hartford Life and Annuity Insurance Company, is a Connecticut corporation with its usual place of business located at 200 Hopmeadow Street, Simsbury, Connecticut; and is subject to the jurisdiction of this Court pursuant to M.G.L. c. 223A, §3.

FACTS COMMON TO ALL COUNTS

3. On or about September 28, 1981, the Defendant issued a \$50,000.00 Flexible Premium Adjustable Life Insurance policy (Policy No. 004 U01334377) on the life of William Fiore. The initial owner of the policy was Augustine A. Fiore.
4. Subsequent to September 28, 1981, the ownership of the policy was changed to James W. Fiore, the son of William Fiore.
5. On or about June 28, 2003, the Plaintiff, James W. Fiore, received notification from the Defendant, Hartford Life and Accident Insurance Company, that Policy No. 004 U01334377 was terminated for failure to pay the required premium due of \$1,541.12. Prior to said date, all premiums due under the contract of insurance were paid in a timely manner.
6. The Plaintiff, James W. Fiore, prior to June 28, 2003, did not receive any notification from the Defendant, Hartford Life and Accident Insurance Company,

No. of Pmts. one
Fee Paid - \$ 240.00 Cash - Check
Surcharge Paid - \$ 15.00 Cash - Check
Security Fee - Paid - \$ 20.00 Cash - Check
Received by BH

ACON & WILSON, P.C.
ATTORNEYS AT LAW
33 STATE STREET
SPRINGFIELD, MA 01103
TELEPHONE (413) 781-0560
FAX (413) 739-7740

9 CHAPEL STREET
WESTFIELD, MA 01085
TELEPHONE (413) 562-9607
FAX (413) 562-7589

351 PLEASANT STREET
NORTHAMPTON, MA 01060
TELEPHONE (413) 584-3250
FAX (413) 586-0548

34 ELLA GRASSO TURNPIKE
WINDSOR LOCKS, CT 06096
TELEPHONE (860) 623-6482
FAX (860) 654-1948

that Policy No. 004 U01334377 was subject to termination for failure to pay the insurance premium nor did the Plaintiff receive any premium invoices.

7. The Plaintiff, James W. Fiore, at all times prior to June 28, 2003, paid all premiums due on the Policy No. 004 U01334377 in a timely manner which totaled approximately \$41,000.00.
8. On or about August 28, 2003, the Plaintiff, James W. Fiore, notified the Defendant, Hartford Life and Accident Insurance Company, that he did not receive notification, either by regular U.S. mail, certified mail or registered mail of the premium payment that was due and owing on Policy No. 004 U01334377.
9. On or about November 10, 2003, the Defendant, Hartford Life and Annuity Insurance Company, notified the Plaintiff, James W. Fiore, that Policy No. 004 U01334377 was terminated for failure to pay the aforementioned premium due and owing on the policy, but stated the policy could be reinstated pursuant to the provisions of the policy, which, in pertinent part states: "...If this policy terminates as provided under Grace Period, it may be reinstated within five (5) years after the date of termination provided (a) evidence of insurability satisfactory to us is furnished; and (b) premium sufficient to maintain the policy in force for two months is paid." The insured, William M. Fiore, is unable to provide evidence of insurability.

COUNT I
(Breach of Contract)

10. The Plaintiff, James W. Fiore, restates and realleges the allegations contained in paragraphs 1 through 9 of this Complaint.
11. The Plaintiff, James W. Fiore, states that the Defendant, Hartford Life and Annuity Insurance Company, breached the contract with regard to the Flexible Premium Adjustable Life Insurance Policy No. 004 U01334377 by failing to adequately provide notice of a premium payment due on said policy, by failing to provide notice of a possible termination of the policy for non-payment of premiums, and by failing to reinstate the policy after it received written notice of its breach of the policy terms and conditions.

WHEREFORE, the Plaintiff, James W. Fiore, demands judgment against the Defendant, Hartford Life and Annuity Insurance Company, plus interest and costs of suit.

COUNT II
(Breach of the Implied Covenants of Good Faith and Fair Dealing)

12. The Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 11 herein.

MACON & WILSON, P.C.
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13. The contract of insurance in existence between the Defendant, Hartford Life and Annuity Insurance Company and the Plaintiff, James W. Fiore, contain implied covenants of good faith and fair dealing within which each party agrees not to undertake any act which would deprive either party of the benefits of the agreement.
14. The Defendant has breached the implied covenants of good faith and fair dealing by failing to notify the Plaintiff of a premium payment due under the terms of the life insurance policy; by failing to provide the Plaintiff with notice of a possible lapse in the policy due to non-payment of premiums and by failing and refusing to reinstate the terms of the policy of insurance upon being notified, in writing, that it had breached the written terms of the policy.
15. The Defendant has accepted premium payments in excess of forty-one thousand dollars (\$41,000.00) since the inception of the policy on or about September 28, 1981 and terminated said policy without providing adequate notice of a possible termination to the Plaintiff.
16. Said actions constitute a breach of the implied covenants of good faith and fair dealing for which the Plaintiff is entitled to an award of monetary damages.

WHEREFORE, the Plaintiff, James W. Fiore, demands judgment against the Defendant, Hartford Life and Accident Insurance Company, plus interest and costs of suit; and the Plaintiff further requests that the Court treble said damages and award the Plaintiff its reasonable attorney's fees and costs, all in accordance with the provisions of M.G.L. Chapter 93A, §§2 and 11.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
The Plaintiff,
James W. Fiore,
By Attorney,


MICHAEL J. COYNE, ESQUIRE
BACON & WILSON, P.C.

33 State Street
Springfield, MA 01103
Ph: (413) 781-0560
Fax: (413) 739-7740
BBO# 541834
May 11, 2004

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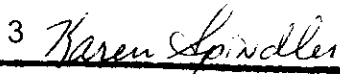
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A true copy,

Attest:

3 
Deputy Assistant Clerk